

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

Maymead Materials, Inc.)

Respondent.)

) Docket Number: EPCRA-04-2010-2010(b)

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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Maymead Materials, Inc.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is Maymead Materials, Inc. Maymead Materials, Inc., is incorporated in the State of Tennessee and is doing business in the States of Tennessee and North Carolina.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facilities are located at:

- (a) 164 Bostian Bridge Road, Statesville, North Carolina;
- (b) 3684 N.C. Highway 105 S, Boone, North Carolina;
- (c) 1529 11th Avenue SE, Hickory, North Carolina;
- (d) 7418 U.S. Highway 221 North, Marion, North Carolina;
- (e) 180 Causby Quarry Road, Morganton, North Carolina;
- (f) 183 Jonas Ridge Road, Pineola, North Carolina; and
- (g) 731 Prison Camp Road, Mountain City, Tennessee.

III. EPA's Allegations of Violations

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2006 and 2007, asphalt cement, diesel fuel #2, and diesel fuel #4 were present at the Statesville, North Carolina facility in an amount equal to or greater than 10,000 pounds.

10. At some time during the calendar years of 2005, 2006 and 2007, amines, asphalt cement, diesel fuel #2 and diesel fuel #4 were present at the Boone, North Carolina facility in an amount equal to or greater than 10,000 pounds.

11. At some time during the calendar years of 2006 and 2007, asphalt cement, diesel fuel #2 and diesel fuel #4 were present at the Hickory, North Carolina facility in an amount equal to or greater than 10,000 pounds.

12. At some time during the calendar years of 2005, 2006 and 2007, amines, asphalt cement, diesel fuel #2 and diesel fuel #4 were present at the Marion, North Carolina facility in an amount equal to or greater than 10,000 pounds.

13. At some time during the calendar years of 2006 and 2007, asphalt cement, diesel fuel #2 and diesel fuel #4 were present at the Morganton, North Carolina facility in an amount equal to or greater than 10,000 pounds.

14. At some time during the calendar years of 2005, 2006 and 2007, amines, asphalt cement, diesel fuel #2, and diesel fuel #4 were present at the Pineola, North Carolina facility in an amount equal to or greater than 10,000 pounds.

15. At some time during the calendar years of 2005, 2006 and 2007, amines, asphalt cement, diesel fuel #2 and diesel fuel #4 were present at the Mountain City, Tennessee facility in an amount equal to or greater than 10,000 pounds.

16. Amines, asphalt cement, diesel fuel #2, and diesel fuel #4 are "hazardous chemicals" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

17. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for amines and/or asphalt cement, diesel fuel #2 and diesel fuel #4 to the SERC, LEPC and fire department with jurisdiction over the respective facilities for the calendar years 2005, 2006 and 2007, respectively, by March 1 of the following year.

18. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facilities for calendar years 2005, 2006 and 2007, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

19. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$32,500 for each violation of EPCRA Section 312 that occurred after March 15, 2004, but prior to January 12, 2009. Each day a violation of EPCRA Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

21. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

22. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

23. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

24. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

25. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

26. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

27. Respondent shall pay a civil penalty of THIRTY THOUSAND ONE HUNDRED EIGHTY-SIX DOLLARS (\$30,186), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

28. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to one of the following addresses:

By Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Overnight:

U.S. Bank
Natalie Pearson (314) 418-4087
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check shall reference on its face the name and the Docket Number of the CAFO.

29. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Vinson Poole
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

30. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

31. Respondent shall undertake and complete, the approved Pollution Reduction SEP, (Attachment A), within 90 days of the effective date of this CAFO. Maymead Materials, Inc., will purchase the necessary materials, and install and operate a complete Astec Double Barrel Green System at each of the Statesville, North Carolina and the Mountain City, Tennessee facilities. Respondent has estimated the cost of this project to be ONE HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$135,560) for the purchase and installation. EPA has agreed to value the SEP at \$113,198. In order for Respondent to receive credit for the SEP, it must fully and timely complete the SEP project. If Respondent does not fully and timely complete the project, it shall be required to pay a stipulated penalty pursuant to Paragraph 38, irrespective of the amount of money the Respondent has spent. Respondent has represented in the SEP Proposal that installation and operation of each Astec Double Barrel Green system is expected to result in: (1) an estimated reduction of over five tons per year of air pollutants, including sulfur dioxide, nitrogen oxides, carbon monoxide, and volatile organic compounds (based on an estimated 11.8 percent reduction in recycle #4 fuel oil usage); and (2) an estimated reduction of over 308 pounds per year of toxic and hazardous air pollutants, as evidenced in Attachment A (Enclosure C).

32. Respondent agrees that EPA may inspect the facilities at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

33. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Vinson Poole at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoices and receipts, showing a total expenditure of ONE HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$135,560), or greater, was spent on the purchase and installation of the equipment described in paragraph 31.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

34. Within 6 months after the completion of the SEP, Respondent shall submit an Emissions Reduction Report documenting the reductions in fuel use and emissions of air pollutants as a result of performing the SEP. The report shall include a summary of fuel records that will compare fuel usage prior to the installation and operation of the new system, to fuel usage after the system has been installed and operated for 6 months. Additionally, the report shall include summaries of testing, sampling and monitoring results of air pollutant emissions that are expected to be reduced by the new system, and shall compare pre-installation results to post-installation results. Failure of Respondent to satisfactorily demonstrate substantial achievement of estimated pollution reduction stated in paragraph 31 and Attachment A shall be considered a failure to completely and fully complete the SEP, and Respondent shall be required to pay a stipulated penalty pursuant to Paragraph 38, irrespective of the amount of money the Respondent has spent.

35. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

36. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

37. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986."

38. If Respondent fails to timely and fully complete any part of the SEP in accordance with the requirements of paragraph 31, including the failure to achieve expected reductions in emissions of air pollutants as specified in paragraph 31, Respondent shall pay a stipulated penalty to EPA in the amount of NINETY THOUSAND FIVE HUNDRED FIFTY EIGHT DOLLARS (\$90,558).

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and satisfactorily demonstrated substantial achievement of estimated pollution reduction, and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

39. If Respondent fails to timely submit a SEP Completion Report as required by paragraph 33 of this CAFO, or the Emissions Reduction Report required by paragraph 34 of this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

40. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

41. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

43. This CAFO shall be binding upon the Respondent, its successors and assigns.

44. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

V. Effective Date

45. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Maymead Materials, Inc.

By: LeAnn Mynatt Date: 6/7/10
Name: LeAnn Mynatt (Typed or Printed)
Title: Counsel for Maymead Materials (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly A. Sapp Date: 5/21/10
Kenneth R. Lapierre, Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 9th day of June, 2010

Susan B. Schub
Susan B. Schub
Regional Judicial Officer